

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
CB Radio, Inc.)	File Number EB-02-AT-398
)	
Owner of Unregistered Antenna Structure located at)	NAL/Acct. No.200332480016
36° 20' 07" North Latitude by 82° 13' 03" West)	
Longitude in Elizabethton, Tennessee)	FRN 0007-8859-81
)	
Elizabethton, Tennessee)	

FORFEITURE ORDER

Adopted: August 4, 2004

Released: August 6, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of two thousand four hundred dollars (\$2,400) to CB Radio, Inc. (“CB”), licensee of AM radio station WBEJ, Elizabethton, Tennessee and owner of the station’s antenna structure (registration number 1237701) for willful and repeated violation of Section 17.4(a) of the Commission’s Rules (“Rules”).¹ The noted violation involves CB’s failure to register its antenna structure for the station.

2. On January 23, 2003, the District Director of the Commission’s Atlanta, Georgia, Field Office (“Atlanta Office”) issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to CB in the amount of three thousand dollars (\$3,000).² CB filed its response on February 24, 2003.

II. BACKGROUND

3. On September 25, 2001, an agent from the Atlanta Office inspected AM radio station WBEJ and its antenna structure, located at 36° 20' 07" North Latitude and 82° 13' 03" West Longitude, in Elizabethton, Tennessee. The inspection established that WBEJ’s antenna structure was not registered with the Commission. On October 4, 2001, the Atlanta Office issued a *Notice of Violation* (“*NOV*”) to CB for failure to register WBEJ’s antenna structure with the Commission. On October 29, 2002, an agent from the Atlanta Office again inspected AM radio station WBEJ and its antenna structure. The agent determined that the antenna structure was still unregistered.

4. On January 23, 2003, the District Director of the Atlanta Office issued the subject *NAL* to CB finding that it willfully and repeatedly violated Section 17.4(a) of the Rules by failing to register the antenna structure. In its response to the *NAL*, CB seeks cancellation of the proposed monetary forfeiture. CB contends that it attempted to register WBEJ’s antenna structure but was not successful until February

¹ 47 C.F.R. § 17.4(a).

² See *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332480016 (Enf. Bur. Atlanta Office, January 23, 2003).

14, 2003,³ and that its failure to timely register WPEJ's antenna structure was not willful.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Policy Statement").⁶ Section 503(b) of the Act requires that, in examining CB's response, the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

6. Section 17.4(a) of the Rules requires the owners of existing antenna structures that were assigned painting or lighting requirements before July 1, 1996, to register those antenna structures with the Commission no later than July 1, 1998.⁸ WBEJ's antenna structure was unregistered between September 25, 2001, the date of our initial inspection, and October 29, 2002, the date of our follow-up inspection. We find that CB violated Section 17.4(a) of the Rules by failing to register WBEJ's antenna structure.

7. CB contends that its failure to register WBEJ's antenna structure is not willful because it attempted to register its antenna structure.⁹ CB asserts that, following the *NOV* issued on October 4, 2001, CB filed Form 7460-1 with Federal Aviation Administration ("FAA") to obtain a Determination of No Hazard to Air Navigation (for submission with an antenna structure registration application) but had heard nothing from the FAA at the time of the FCC's October 29, 2002 inspection. Additionally, CB asserts that after the October 29, 2002, inspection, it re-filed FAA Form 7460-1 upon learning that the FAA had no record of receiving that form. The FAA issued a Determination of No Hazard to Air Navigation to CB on January 13, 2003.¹⁰ CB filed an antenna structure registration application on February 4, 2003, and completed registration of the tower on February 14, 2003.

8. CB knew WBEJ's antenna structure was unregistered but did not register it until more than 16 months after the issuance of the *NOV*. We, accordingly, find that CB's violation of Section 17.4(a) of the Rules was both willful¹¹ and repeated.¹²

³ The Commission's records confirm that CB registered WBEJ's antenna structure on February 14, 2003.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

⁷ 47 U.S.C. § 503(b)(2)(D).

⁸ WBEJ's tower was assigned painting and lighting requirements before July 1, 1996, by FAA study SW-OE-1884.

⁹ We will not address the attempts described by CB to register WBEJ's tower before the September 25, 2001, inspection because this forfeiture proceeding is based on CB's failure to register the tower after that date.

¹⁰ CB asserts that it did not receive the FAA Determination until a few weeks later.

¹¹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . ." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

9. As support for canceling the proposed monetary forfeiture for the Section 17.4(a) violation, CB cites *Jamie Patrick Broadcasting, Ltd.*, 17 FCC Rcd 26277 (Enf. Bur. 2002); *Truth Broadcasting Corporation*, 17 FCC Rcd 24376 (Enf. Bur. 2002); and *C.W.H. Broadcasting, Inc.*, 17 FCC Rcd 14324 (Enf. Bur. 2002). These cases, however, are factually dissimilar to this case and contain nothing which supports canceling the forfeiture. In *Jamie Patrick Broadcasting, Ltd.*, there was no violation of Section 17.4(a) and the cancellation of the forfeiture was based on the licensee's inability to pay the forfeiture amount. While the *NALs* issued in *Truth Broadcasting Corporation* and *C.W.H. Broadcasting, Inc.* did involve violations of Section 17.4(a), the tower licensees in those cases sought cancellation of the forfeitures based on reasons different from those offered by CB. Moreover, in *Truth Broadcasting Corporation* we determined, upon review of the *NAL*, that the record ultimately did not support a finding of a Section 17.4(a) violation. In *C.W.H. Broadcasting, Inc.*, we reduced the forfeiture amount for the Section 17.4(a) violation, as we did for the amounts for the other noted violations, primarily because of the financial hardship we believed the forfeiture would pose based on the documents C.W.H. submitted.

10. We find that CB's filing of FAA Form 7460-1 prior to the October 29, 2002, inspection demonstrates a good faith effort to comply with Section 17.4(a).¹³ However, CB displayed a lack of diligence by failing to check the status of its FAA filing until after the October 24, 2002, inspection. We find that CB's partial effort to register WBEJ's tower following the September 25, 2001, inspection does not warrant cancellation of the proposed forfeiture, but does warrant a reduction to \$2,400.

11. We have examined CB's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that CB willfully and repeatedly violated Section 17.4(a) of the Rules and we find that cancellation of the proposed monetary forfeiture is not warranted but a reduction to \$2,400 is appropriate.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁴ CB Radio, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of two thousand four hundred dollars (\$2,400) for its willful and repeated violation of Section 17.4(a) of the Rules.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁵ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference *NAL/Acct. No. 200332480016* and *FRN 0007-8859-81*. Requests for full payment under an installment plan should be sent to: Chief, Revenue and

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¹² As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991).

¹³ See *Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003).

¹⁴ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

¹⁵ 47 U.S.C. § 504(a).

Receivables Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁶

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to CB Radio, Inc., 626 ½ E. Elk Avenue, Elizabethton, TN 37643.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁶ See 47 C.F.R. § 1.1914.